

E-filed on 1/11/06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE NETOPIA, INC., SECURITIES
LITIGATION

C-04-03364 RMW
AND RELATED CASES

THIS ORDER RELATES TO:
ALL ACTIONS

ORDER DENYING DEFENDANTS'
MOTION FOR LEAVE TO FILE A MOTION
FOR RECONSIDERATION

[Re Docket Nos. 106, 108]

Defendants Netopia, Inc., Alan Lefkof, and David Kadish move¹ for leave to file a motion for reconsideration of this court's December 15, 2005, order denying in part and granting in part the defendants' motion to dismiss or strike certain portions of the plaintiffs' consolidated amended complaint. The moving defendants complain that this court incorrectly determined that a motion to dismiss under Fed.R.Civ.P. 12(b)(6) cannot be directed against a subpart of a complaint other than a claim for relief. The defendants conceded, however, at the hearing on the motion that they had no

¹ Defendant William Baker joins this motion but makes no additional arguments why the motion should be granted.

1 legal authority for their position.² Defendants' motion for leave to file a motion for reconsideration
2 is denied.

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6 DATED: 1/09/06

/s/ Ronald M. Whyte
RONALD M. WHYTE
United States District Judge

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25 ² The transcript of the hearing reveals the following exchange:

26 THE COURT: So what legal authority is there to say you can dismiss a portion of a
27 complaint?

MS. BRODY: Maybe a better way to attack it, then, would be to strike it.

28 Transcript of Dec. 9, 2005, hearing at 19.

A copy of this order was mailed on 1/11/06 to:

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Counsel are responsible for distributing copies of this order to co-counsel, as necessary.

/s/ JH